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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
U S WEST, Inc., Transferor, and)
Qwest Communications International Inc.,) CC Docket No. 99-272
Transferee, For Consent to Transfer of Control)

COMMENTS OF MCI WORLDCOM, INC.

MCI WORLDCOM, Inc. ("MCI WorldCom") hereby submits its comments regarding the joint applications of U S WEST, Inc. ("U S WEST") and Qwest Communications International Inc. ("Qwest") ("Qwest-U S WEST Appl." or "applications") for approval of their proposed merger.

I. SUMMARY OF MCI WORLDCOM'S POSITION

By this pleading, MCI WorldCom respectfully requests that the Commission not approve the subject applications except pursuant to the condition that Qwest and U S WEST, prior to such FCC approval, comply with all of the requirements of Section 271 of the Communications Act, as amended. That would mean, among other things, that Qwest, prior to the approval of its applications, must completely divest itself of all of its interLATA telecommunications services and interLATA information services in each U S WEST states for which U S WEST has not obtained Section 271 authority.

In its condition or accompanying order, the Commission should explicitly identify the kinds of services that constitute the interLATA telecommunications and information services that Qwest-U S WEST (collectively referred to as the "Merged Company") may not provide. That list

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of services, generally, should include: (a) data as well as voice services (so that Qwest cannot operate an interLATA network in the U S WEST region which provides customers in that region with Internet backbone or any other services); and (b) Internet services, which constitute an interLATA information service. InterLATA facilities that Qwest owns in the U S WEST region cannot be used to provide any interLATA telecommunications or information service to any customer (or any location of any customer) in that region, either directly or indirectly, through resale or any other arrangement. Further, neither Qwest nor U S WEST may operate as an interLATA Internet service provider in the U S WEST region unless and until U S WEST gets Section 271 authority in the pertinent in-region state.

Qwest and U S WEST must be required to demonstrate to the Commission that they have complied with the above-referenced condition before the proposed merger closes. That is, Qwest and U S WEST must be required to submit a filing to the Commission which demonstrates that they are not providing any interLATA service and which details the steps that they have taken to divest all business (equipment, employees, customers, etc.) that provides any interLATA service. Finally, interested parties should have an opportunity to comment in this proceeding, and the Commission should render its findings. This should be a simple proceeding which can be completed on an expedited basis.

II. THE QWEST-U S WEST APPLICATIONS

On August 19, 1999, Qwest and U S WEST filed applications under Sections 214 and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 214, 310(d), and Sections 34-39 of the Cable Landing License Act, 47 U.S.C. §§ 34-39, requesting Commission approval for the transfer of control of licenses and authorizations held by subsidiaries of their two

companies. The above-referenced applications were filed in connection with the proposed merger of U S WEST with and into Qwest. Pursuant to the terms of the proposed merger, licenses and authorizations currently held by Qwest and U S WEST subsidiaries will continue to be held by these same entities, as controlled by the Merged Company.

In their applications, Qwest and U S WEST made various representations regarding the steps that they are prepared to take to facilitate the speedy Commission approval of their proposed merger. Specifically, Qwest declared that it is willing “to take the difficult step of divesting all of its in-region interLATA services prior to the merger closing.” Qwest-U S WEST Appl., page 3. Therein, Qwest additionally noted that it makes the referenced divestiture pledge “only with the determination to see the merged company then obtain interLATA relief at the earliest possible date, and the resolve to take actions in concert with regulatory authorities to make this happen.” Id.

That general representation notwithstanding, Qwest and U S WEST’s applications give virtually no details regarding Qwest’s divestiture proposal. In light of the Commission’s well-established policies regarding the competitive environment that must exist prior to a Bell Operating Company (“BOC”) receiving Section 271 authority, the applications’ lack of details regarding the proposed divestitures raises troubling questions regarding the Merged Company’s compliance with Section 271 of the Act. In order to ensure compliance with Section 271, Qwest and U S WEST must completely divest themselves of all of their in-region interLATA telecommunications services *and* interLATA information services before the Commission approves the subject applications.

III. DISCUSSION -- The Merged Company May Not Provide InterLATA Telecommunications Or Information Services In Any In-Region State Where U S WEST Lacks Section 271 Authority.

It is undisputed that Section 271 expressly prohibits BOCs such as U S WEST, either directly or through an affiliate, from providing in-region interLATA services, absent Commission approval. *See* 47 U.S.C. § 271. That fact notwithstanding, unless Qwest and U S WEST are compelled by the Commission to completely divest all of their interLATA services, prior to the closing of their proposed merger, the Merged Company will be positioned to provide interLATA services in states where U S WEST is prohibited from providing such services. These services could be provided by the Merged Company, despite the fact that U S WEST has failed to satisfy the mandates of Section 271. That type of circumvention of Section 271 would defeat its very purpose — *i.e.*, to “use[] the promise of long distance entry as an incentive to prompt the BOCs to open their local markets to competition.” *In re Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, Memorandum Opinion and Order, CC Docket No. 98-121 FCC 98-271 ¶ 3, (rel. Oct. 13, 1998) (“*FCC Louisiana II Order*”).

If Qwest-U S WEST is allowed to provide interLATA telecommunications or information services in-region, directly or through affiliates, before its control of bottleneck local facilities is broken and it meets all Section 271 requirements, “there is an unacceptable danger that they will use their market power to compete unfairly in the long distance market.” *FCC Louisiana II Order* ¶ 3. The Commission can defeat this threat to competition by mandating that U S WEST and Qwest’s Section 271 divestiture occur prior to the close of the proposed merger.

A. Without Section 271 Authority, The Merged Company Cannot Provide InterLATA Telecommunications Services To Customers Anywhere In The Current U S WEST Region.

Pursuant to the mandates of Section 271, the Merged Company would be prohibited from providing originating interLATA services to any customers in any U S WEST state for which U S WEST has not received Section 271 authority. That is true because the same Section 271 prohibitions that apply currently to U S WEST would automatically apply to the Merged Company in U S WEST's existing region. *See In re Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Southern New England Telecommunications Corporation, Transferor to SBC Communications, Inc., Transferee*, Memorandum Opinion and Order, CC Docket No. 98-25, FCC 98-276, ¶ 36 (rel. Oct.23, 1998) ("*SBC-SNET Order*") ("in order to comply with Section 271, SNET and its subsidiaries must cease originating long distance traffic in SBC's current seven-state region"). As is further discussed below, this includes all interLATA services provided by Qwest, whether interLATA telecommunications services or interLATA information services, including Internet services. Requiring divestiture of Qwest's long distance and Internet operations (including its interLATA network) in areas where U S WEST has not yet received Section 271 authority is the most straightforward type of condition, with the least impact on consumers, that would ensure compliance with Section 271.

Further, the applicants' compliance with this condition would not reduce competition to provide interLATA services. That is because Qwest, undoubtedly, would sell its interLATA business to a buyer with the ability and incentive to compete effectively in the marketplace. In any event, the Commission has noted that there exists vigorous competition in the long distance market, as well as the fact that barriers to entry are low. *See In re Application of*

WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc., Memorandum Opinion and Order, CC Docket No. 97-211, FCC 98-225, ¶¶ 36-77 (rel. Sep. 14, 1998) (“*MCI-WorldCom Order*”).

B. A Merged U S WEST-Qwest Could Not Lawfully Continue To Provide Internet Service To Qwest Customers Because Internet Services Are Prohibited InterLATA Information Services.

Not only will the Merged Company be prohibited from providing interLATA telecommunications service to customers in the U S WEST region where U S WEST has not received Section 271 authority, but it would also have to cease providing Internet services supported by its interLATA backbone network, or that of any other provider of Internet backbone services. *See In re Implementation of the Non-Accounting Safeguards*, First Report & Order and Further Notice of Proposed Rulemaking, 11 F.C.C.R. 21905 ¶ 115, CC Docket 96-149 (rel. Dec. 24, 1996); *cf. SBC-SNET Order* ¶ 36.

U S WEST is now providing interLATA Internet services to its in-region customers, in violation of Section 271. As has been determined by the Commission and has been conceded by U S WEST, a BOC must have Section 271 authority to provide services over interLATA data networks in its region.¹ Accordingly, U S WEST cannot lawfully provide in-region interLATA Internet services, whether or not Qwest or another affiliate owns the interLATA data network that carries the Internet traffic. A BOC, directly or through an affiliate, cannot either: (1) own,

¹ See Press Release, *Warning: regulation of Internet is Creating a Nation of Information “Haves” and “Have-Nots”*, (April 13, 1999), www.uswest.com/news/041399.html (acknowledging that activation of data network depends on regulatory approval); *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 13 FCC Rcd. 15280 (1998), *appeal pending sub nom., U S WEST Communications, Inc. v. FCC*, No. 98-1410 (D.C. Cir).

operate, or provide services over an interLATA network, whether data or voice, circuit-switched or packet-switched; or (2) provide interLATA information services, regardless of whether it provides the interLATA telecommunications services that are an input into interLATA information services. *Id.*

The Internet services issue referenced above is not a novel issue. Approximately three years ago, MFS Communications Company (now a wholly owned subsidiary of MCI WorldCom) filed a still-unresolved challenge to Bell Atlantic's provision of Internet services.² MFS demonstrated that BOC's provision of interLATA Internet services violates the requirement that interLATA information services only be offered after compliance with Section 271 and through a separate affiliate under Section 272. The above-referenced requirements would likewise be violated by Qwest-U S WEST, were the Merged Company to provide telecommunications and information services over an interLATA network. The Commission cannot permit the merger to proceed if it would create, or exacerbate, a violation of Section 271.

For all of the reasons discussed above, U S WEST and Qwest should be required to submit a plan to the Commission which provides specific details regarding their prospective divestiture of interLATA services (including, but not necessarily limited to, such information as the identity of purchasers and the terms and conditions of the divestiture transactions). The Commission must review and approve the applicants' divestiture plan, and should not approve

²See Petition for Reconsideration, *In the Matter of Bell Atlantic Telephone Companies Offer of Comparably Efficient Interconnection to Providers of Enhanced Internet Access Services*, CCBPol 96-09 (filed July 3, 1996) ("BA CEI Challenge"); Ex Parte Filing, BA CEI Challenge (filed Nov. 13, 1998); see also Ex Parte Filing of WorldCom, Inc., *In the Matter of Southwestern Bell Offer of Comparably Efficient Interconnection*, CCB-Pol 97-05 (filed July 7, 1997).

the transfer of control applications until it has determined that the applicants' subject divestiture is complete and otherwise satisfactory.

CONCLUSION

On the basis of the foregoing, the above-referenced applications of Qwest and U S WEST should not be approved by the Commission except pursuant to the condition that Qwest and U S WEST, prior to such FCC approval, comply with all of the requirements of Section 271 of the Communications Act, as amended.

Respectfully submitted,

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Dated: October 1, 1999

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served, this 1st day of
October, 1999, hand-delivery, on the following:

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